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LANSING

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Analysis of Senate Bill 603-4 (As Introduced)

Topic: Auctioneer Regulation
Sponsor: Senator Jelinek
Co-sponsors: Senators Allen and Basham
Committee: Senate Economic Development, Small Business & Regulatory Reform

Date Introduced: June 16, 2005
Date Enrolled:
Date of Analysis: January 18, 2006

Position: The Department of Labor & Economic Growth does not support the bills.

Background:

There has been a desire to register auctioneers on a statewide basis at least since 1997, because Michigan's current system of regulating auctions and auctioneers, which relies on local registration, is not effective. Under current law a person planning an auction is required to obtain a license from the township clerk at least 10 days before the sale. The licensing fee is \$25 and a bond in an amount determined by the township board is required to be posted at the time of application. The auctioneer is required to submit a report to the Department of Treasury within 10 days of the sale. Cities and villages have the authority to regulate auction sales under the provisions of the home rule laws. Local requirements relating to auction sales are frequently ignored and seldom enforced.

Description of Bill:

HB 4943 and its identical counterpart, SB0603 amend the Occupational Code by adding a new article 28, creating a Board of Auctioneers and providing for statewide registration of auctioneers. Individuals and qualifying officers of legal entities, except those exempted by the bill, would be required to obtain a registration to conduct an auction as a "registered auctioneer".

Requirements include:

1. Participation in the conduct of at least 10 auctions under a two-year apprenticeship with a registered auctioneer or graduation from an accredited auction school and 1 year of apprentice experience
2. Completion of an examination, and
3. Good moral character.

There is also a grandfathering provision. Companion bills, HB 4944 and SB0604, create fees for auctioneer registration under the Fee Act.

Arguments For:

The current Michigan requirements are considered burdensome and unworkable. Michigan auctioneers are concerned about the difficulties and costs of being licensed in every city, village

or township in which they do business. Additionally, they are at a competitive disadvantage relative to auctioneers in nearby states. Ohio, Indiana and Wisconsin all have full licensure. Auctioneers from those states can hold sales almost without limitation in Michigan. By contrast, Michigan auctioneers cannot conduct a sale in these states unless they obtain a license or registration from each state. If Michigan had a system of registration, comparable to those states, reciprocity for our registrants would be available. Financial requirements with oversight would further protect public interests, and relieve local governments from registering and monitoring requirements.

Arguments Against:

The benefits may not outweigh the costs. State registration is unlikely to stop itinerant auctioneers from coming to Michigan for a weekend sale. State sales tax collections would then be unlikely to increase, and Michigan consumers won't have significantly greater protection from unscrupulous auctioneers and questionable goods. Despite the relative competitive disadvantage Michigan auctioneers have in neighboring states, it is possible under current law to successfully do business in those states, and several Michigan firms do this.

State regulation may serve to reduce competition, and limit options for state citizens, and, as a registration act, provide a false sense of protection to the public.

The fees provided will not cover department costs to administer this program.

Supporters:

The Michigan Association of Auctioneers has supported similar proposals in the past.

Opponents:

Bureau of Commercial Services

Fiscal Information:

To accommodate additional requirements on the Bureau of Commercial Services, the following costs would be incurred:

Registration, one additional Word Processing Assistant,	\$50,544
+ equipment and supplies	\$05,000

Audit: one additional auditor at	\$73,840
+ equipment and supplies	\$10,000

Enforcement does not anticipate needing additional staff to process complaints for this occupation.

Testing services costs to develop the initial examination	\$18,000
costs to administer the examination quarterly	\$11,000

It is anticipated that the use of an outside contractor would be impractical because of the limited number of applicants for the registration.

Information Technology Support costs would be	\$1,060.00+
with additional costs for issuing registrations and processing renewals.	

Total First Year Costs Estimate:	≈\$169,444
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Total First Year Revenues Estimate based upon proposed fees (below):	≈ \$111,750
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Applications 800 @ \$30	\$24,000
Registration fees 700 @ \$100	\$70,000
Examinations, first year, 500@ \$35	\$17,750
Estimated Shortfall in Revenue	\$57,694

Economic Impact:

The costs to active auctioneers may actually be reduced, as they will no longer have to qualify in each jurisdiction in which they operate. The current estimated revenue will not cover department costs to administer the act; however, these costs are based on very sketchy data about how many applications may be received. (Yellow Pages listings for auctioneers, and membership data for the Michigan Auctioneers Association).

Administrative Rule Impact:

Rules would be required to specify how the bureau will handle audits, trust accounts, and to define "qualifying member" for purposes of registering businesses, unless defined in the act, and other policies to carry out the requirements of the act. If the suggestions below are not added to the statute, they must be promulgated before the act can be fully implemented. This process will take at least one year after the effective date of the law to implement the program.

Other Comments:

1. Recordkeeping:

- a) Page 7, line 16 through page 8 line 1, Section 2813(10): The record requirement for bookkeeping would be much better if it was more specific, like the following: "The records shall consist of a Cash Receipts and Disbursements Journal and Ledgers. The ledgers are to be maintained separately for each transaction, and contain the following data:
 - i) Names of both parties
 - ii) Postings of all transactions
 - iii) Date of each transaction, in chronological sequence
 - iv) Amount received and/or disbursed; name of party giving monies and name of principal or Payee and purpose of disbursements
 - vi) Check number of disbursements
 - vii) A running balance after each receipt and disbursement
 - viii) Description of property being sold.
- b) A personal monies ledger must be maintained to account for personal monies maintained in the trust account. The personal monies ledger is to include the following data:
 - i) Chronological sequence of funds received and disbursed.
 - ii) Running balance after each receipt and disbursement.
 - 1) Receipt postings must include:

Date of receipt
Date of deposit
Name of party giving monies
Name of principal
Amount received

(2) Disbursement postings must include:

Date
Check number, if applicable
Payee
Amount
Purpose
Running balance after each receipt and disbursement.

- c) The above records, as well as trust account bank statements, deposit tickets, deposit receipts, cancelled checks, and voided checks shall be maintained for not less than three years from the date of inception of such records or not less than three years from consummation or termination of the transaction involved, whichever is greater.
 - d) Page 6 line 25 Section 2813(8)(A) The section requires an interest bearing account, yet it is silent as to who the interest belongs. The section should clearly state who the interest belongs to. Also the section needs to state that the depository shall be a depository located in the state of Michigan.
 - e) Page 7, line 4, Section 2813(8)(d): It would be better if the following was added to the end of the cite: "The amount of the registrant's money in this regard is not to exceed \$500.00, is to be known as personal monies, and is to be accounted for as required under Section 2813(10).
 - f) Section 2813(11) needs to include the words "examine" or "audit." It currently states only inspect. It also limits inspection to those records that are required to be maintained by the act. It would be better to replace that with any "records or documents that the department deems necessary"
2. Penalties: Page 9, line 24, Section 2821: We need to add the following provisions for prohibited activities subject to penalties:
- a) Fails to account for or to remit money coming into the registrant's possession which belongs to others.
 - b) Fails to account for all monies deposited into the trust account.
 - c) Fails to deposit monies belonging to others as required by Section 2813.
 - d) Fails to maintain records as required by the act.
3. Section 2813(1) The section should add that all records required under this act shall be maintained at the registered place of business.

4. Section 2813(6) The section calls (there are other sections following as well) the "account" a "custodial account." It should be changed to "trust account."
5. Section 2813(8)(D) The section needs to state the amount of the registrant's monies which can be maintained in the account, such as not more than \$500.00.
6. Section 2813(10)(A) The section needs the "amount received" added, as it totally leaves out that important component.
7. Section 2813(10)(D) The section needs to replace the word "withdrawal" with the word "disbursement". It also needs the amount and check number added.
8. The above records, as well as trust account bank statements, deposit tickets, deposit receipts, cancelled checks, and voided checks shall be maintained for not less than three years from the date of inception of such records or not less than three years from consummation or termination of the transaction involved, whichever is greater.
9. Section 2813(11) The section needs to include the words examine or audit. It currently states only inspect. It also limits are inspection to those records which are required to be maintained by the act. It would be better to replace that with: any records or documents which the department deems necessary.
10. Section 2815(2) This section describes the components which the registrants will be tested on. It would be prudent to include record keeping requirements.
11. Definitions:
 - a) The "auction" term may not include enough depth to cover all the various types of activities that are covered by the term. E.g., silent auction, other means by which these auctioneers would "conduct" an auction.
 - b) Page 10, line 8 (prohibited practices) cites "capping, shilling or steering" -- again, all terms which must be terms of art in the auction industry. They may need to be further fleshed out with rules, or clearer definitions.
 - e) Page 4, line 15 goes into defining the "apprentice experience" that would qualify one for registration. There is no "apprentice" registration type and no description of what a qualified apprenticeship training course or relationship would consist of (e.g., as in Cosmetology or such as a polygraph intern). Without further description in the statute, rules would be needed to clarify this. How would this be reconciled with otherwise unregulated activity by that apprentice, as well as the penalty provided on p. 11, line 3 for any registrant who permits an unregistered person to conduct an auction?
12. Multiple Places of Business: Page 6, line 4 requires posting the registration at their "regular place of business", which is not defined. Where are the books and records supposed to be maintained? Page 5, line 8 allows multiple places of business in the state, at no cost to them for the license -- shouldn't they have to designate one as the main office and these as

branches -- plus where are the books and records supposed to be maintained? As this requires additional bookkeeping and oversight by the department, there should be a fee associated with this, and for changes.

13. Employee Records: Page 5, line 26 requires records on "employees" past and present. Auctioneers may hire any number of persons to assist in moving materials around and other non-auctioneer-requiring functions -- do we really want them to maintain these records on ALL employees? There does not appear to be a public benefit to this requirement, and is burdensome to the registrant.
14. Reciprocity: Page 9 allows us to review other states' auctioneer provisions to determine if they are substantially equivalent to ours, yet requires us to only issue a reciprocal registration if the other states offer reciprocity similar to the provisions of this article. Additional staff time would be needed to make these comparisons and/or to enter into reciprocity agreements with these other states, which we do not currently do.
14. Page 3, line 21: "reasonable" period of time seems a bit vague. Add language to allow "but not more than 30 [60]days" could be more administratively precise in regulating this provision. For example, collection agencies have 30 days per Section 908(3) for replacing a manager.
15. Page 4, line 2: Previous sections (a) through (c) from the bills introduced last session are no longer here. They offered exemptions for auctioning your own property, charitable/religious entities and pursuant to a court order. We can assume now that these functions are not exempt, but if this is a "registration" act, which connotes only title protection, then anyone can perform those functions as long as they do not hold themselves out as a "registered auctioneer." This makes the exemptions that remain in the bill confusing.
16. Page 4, line 19: There still is no definition of "apprentice" -- this seems to be a large omission; what can an apprentice do and under what circumstances/supervision? If not defined in the statute, rulemaking is needed.
17. Page 5, line 4: Reword Section 2811 to read: "Money paid by any person to a registrant in connection with an auction under this article . . ." making the wording clearer in its intent.
18. Page 8, line 12: "ethics and ethical practice" would need to be defined in rules.